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EX PARTE OR LATE FILED

November 5, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, NW
Room 2222
Washington, DC 20554

Re: Oral Ex Parte Presentation
CC Docket No. 96-45
DA No. 99-1331

Dear Madam Secretary:

In accordance with Section 1.1206 of the Commission's rules, 47 CFR Section 1.1206, we hereby provide you with notice of an oral *ex parte* presentation in connection with the above-captioned proceeding. On Thursday, November 4, I met with Kathryn Brown of the Commission. The purpose of the meeting was to discuss the status of the application of Smith Bagley, Inc. to become an Eligible Telecommunications Carrier and to provide SBI's views on the proceeding.

In accordance with the Commission's rules, two copies of this letter and of the materials distributed to those persons attending the meeting are enclosed for inclusion in the Commission's docket file.

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Magalie Roman Salas, Secretary
November 5, 1999
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If you have any questions or require any additional information, please contact undersigned counsel directly.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. LaFuria".

David A. LaFuria
Counsel for Smith Bagley, Inc.

Enclosures

cc: Ms. Kathryn Brown

Smith Bagley, Inc.
FCC Meeting on Eligible Telecommunications Carrier Status
November 4, 1999

I. Introduction.

- A. SBI provides cellular service in Arizona and New Mexico
- B. Largest Native American geographic area of any rural cellular carrier.
- C. Presently providing usable signal to Navajo, White Mountain Apache, Hopi, Zuni, and Ramah.
- D. Total service area to Native American tribes is 15,577 square miles.

II. Status of SBI's ETC Application at FCC

- A. Application filed June 2, 1999.
- B. Comments and replies received - pleading cycle has closed.
- C. Follow up meeting with staff held to identify issues.

III. FCC Must Lead in This Area

- A. In early 1999, Mr. Kennard set forth his desire to have this happen as quickly as possible in his CTIA speech.
- B. SBI responded by proposing a universal service plan for Native Americans in its service area.
- C. The recent order specifically noted that the Commission does not intend to delay processing SBI's application while the rulemaking proceeding is ongoing.
- D. Just last month in an interview, Mr. Kennard renewed his commitment to making USF available to wireless carriers.
- E. SBI's state applications for ETC, filed at the request of the FCC in April of 1999, are not progressing.
- F. 254 gives FCC authority to fashion USF programs in the first instance, and determining eligibility is a part of that.
- G. 214 also permits carriers not subject to state regulation to be designated by FCC.

IV. SBI's ETC Application at the FCC - Remaining Issues.

A. Subscriber Contribution.

- 1. SBI believes \$1.00 per month is the maximum that each subscriber can afford. Per capita income of less than \$5000 on Navajo reservation precludes any significant customer contribution to monthly access charge.
- 2. Monthly contribution can be accomplished by collecting \$24 up front at installation to cover the first 24 months. Unused portion refundable for early disconnect.

3. Problem of collection would be solved - most subscribers have no checking account or credit card with which to make monthly debit. Geography prohibits company from visiting each small town/pueblo to collect.

B. Timing of USF Payment.

SBI requests payments to be made on a quarterly basis. Delay in payment would cripple the program for a small carrier.

C. Waivers of applicable rules can be granted.

1. Federal universal service funds should be used. Federal government preemption in this area necessarily requires use of federal USF to accomplish this objective.
2. SBI requests funding of \$23.99 per month from federal high-cost support program for access. Native American subscribers on reservations to pay \$1.00 per month. Waiver of high-cost support rules needed to fully fund SBI's program.
3. SBI also requests federal universal service fund to provide full support for installation - \$335, includes complete installation package - phone, antenna, installation, connection, marketing, and all other charges.
4. SBI requests no contribution for existing infrastructure.

V. The Time to Act is Now.

- A. Intense need for service in these areas requires immediate action.
- B. State commissions have not solved this problem for decades.
- C. FCC must exert its jurisdiction and preempt state participation in universal service programs on Native American lands.
- D. Unless FCC acts, service to thousands who have no service will be delayed for years.